IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 9627 OF 2004

Bansilal Durgachand Bafana .... Petitioner.

versus

Abdul Shakoor Ramjansaheb Tamboli.... Respondents.

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Shri S.G. Deshmukh for the petitioner.
Shri R.G. Ketkar for the Respondent.

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CORAM ; R.M.S. KHANDEPARKAR, J.

DATED; 6TH DECEMBER, 2004.

P.C.;

1. Heard the learned advocate for the parties.

2. The petitioner challenges the judgment with concurrent findings of the courts below on the point of petitioner's act contrary to the provisions of section 108 of the Transfer of Property Act and regarding the bonafide need of the said premises to the said respondent- landlord while ordering eviction of the petitioner from the suit premises.

3. Undisputedly the findings arrived at, on analysing the evidence on record, disclose that the petitioner has not been able to establish his case regarding the need of removal of 28 zinc sheets and three rafters of

the roof of the said premises. In case there was really damage to three zinc sheets as was sought to alleged by the petitioner, the commissioner's report as well as the panchanama would have indicated other damage having been caused to the roof so as to justify the removal of the zinc sheets and rafters of the roof. Concurrent findings arrived at by both the courts below on this aspect of the matter are clearly borne out of the record. It was sought to be argued that the pleadings regarding the act contrary to the provisions of section 108 of the Transfer of Property Act were vague. Undisputedly the eviction proceedings on the ground of petitioner's act contrary to section 108 of T.P.Act were proceeded by the suit filed by the petitioner himself against the respondent on the ground of obstructions being caused by the respondent to those acts of the petitioner. Obviously therefore the petitioner was very well aware of the details of the allegations by the respondent against him in relation to the acts contrary to the provisions of section 108(o) of the Act. Besides there was no defence raised that the plea in that regard by the respondent was being vague. The concurrent findings arrived at by the courts below on this aspect are clearly borne out from the record. They do not warrant any interference in writ jurisdiction. The eviction has also been ordered

on the ground of bonafide need of the respondent - land lord in that regard and the courts below have held that the evidence on record clearly discloses that the respondent holds two properties, one for his residence and another being the suit property which is a shop premises. Evidence on record in that regard discloses that the shop premises having C.T.S. No.3362 was owned by the brother of the respondent. Besides the findings arrived at by the courts below it also discloses that the petitioner himself was in possession of yet another premises belonging to Shankar which was surrendered by him during the pendency of the proceeding. It was also sought to be contended that the respondent has not given up his present business so as to enable him to start new business in the said premises. The said contention was rejected by observing that it was not necessary for the respondent to stop the existing business in contemplation that he would get the said premises for commencement of new business. As rightly observed by the court below, the parties are fully aware that the litigation does not get over immediately and therefore the landlord cannot be expected to stop his business in contemplation that he would start new business after obtaining the possession of the suit premises. Merely because he continued with the present business during the pendency of the proceedings, that

cannot be to advantage of the petitioner to contend that the landlord is not entitled to get possession of the said premises for commencement of new business.

4. In the facts and circumstances of the case it is apparent that the findings arrived at by the courts below, apart from being concurrent, they are clearly borne out from the record and do not warrant interference in the writ petition under Article 227 of the Constitution of India. Therefore the petition fails and it is hereby rejected.

5. At the request of the learned advocate for the petitioner, the execution of the eviction shall remain suspended till 31st March 2005 subject to the petitioner and all his adult family members in possession of the suit premises shall file the undertakings before the Registrar General of this court within a period of three weeks from today to the effect that they will not part with the possession in favour of a third party nor will create any third party right therein and shall deliver the peaceful vacant possession of the suit premises to the respondent-landlord, on or before 31st March 2005.

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